

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs June 26, 2007

STATE OF TENNESSEE v. CHRISTOPHER WAYNE WILLIS

Appeal from the Criminal Court for Knox County
Nos. 79783A, 83841 Richard R. Baumgartner, Judge

No. E2006-01512-CCA-R3-CD - Filed November 8, 2007

The defendant, Christopher Wayne Willis, was convicted on his guilty pleas of child abuse and vandalism, both Class D felonies. T.C.A. §§ 39-15-401 (child abuse); 39-14-408 (vandalism). He received an agreed sentence of four years for each conviction, to be served consecutively. The trial court ordered the manner of service to be four years in the Department of Correction followed by four years of probation. The defendant appeals the imposition of incarceration for the child abuse sentence. Upon review, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court Affirmed

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which THOMAS T. WOODALL and D. KELLY THOMAS, JR., JJ., joined.

Vanessa L. Lemons, Knoxville, Tennessee, for the appellant, Christopher Wayne Willis.

Robert E. Cooper, Jr., Attorney General and Reporter; Rachel West Harmon, Assistant Attorney General; Randall E. Nichols, District Attorney General; and Willie R. Harper, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

According to the evidence presented at the sentencing hearing, the defendant's girlfriend's toddler son was injured while in the care of the defendant and his girlfriend, Melissa Ann Brandt. The defendant was charged with five counts of child abuse, and Ms. Brandt was charged with one count of child abuse. The assistant district attorney general stated that both the defendant and his girlfriend denied culpability. Both pled guilty. The defendant pled guilty to one count, consisting of four merged counts, and the fifth count was dismissed. The defendant also pled guilty to a vandalism charge he received while on bond for the child abuse charges. The state sought a sentence of total incarceration for the defendant, and the defendant requested total probation. The trial court

ordered that the defendant serve the four-year child abuse sentence in the Department of Correction on the basis that an alternative sentence would depreciate the seriousness of the offense.

On appeal, the defendant claims he should have received a sentence of probation for the child abuse conviction. Appellate review of sentencing is de novo on the record with a presumption that the trial court's determinations are correct. T.C.A. § 40-35-401(d). As the Sentencing Commission Comments to this section note, the burden is now on the defendant to show that the sentence is improper. This means that if the trial court followed the statutory sentencing procedure, made findings of fact that are adequately supported in the record, and gave due consideration and proper weight to the factors and principles that are relevant to sentencing under the 1989 Sentencing Act, we may not disturb the sentence even if a different result were preferred. State v. Fletcher, 805 S.W.2d 785, 789 (Tenn. Crim. App. 1991).

In conducting a de novo review, we must consider (1) the evidence, if any, received at the trial and sentencing hearing, (2) the presentence report, (3) the principles of sentencing and arguments as to sentencing alternatives, (4) the nature and characteristics of the criminal conduct, (5) any mitigating or statutory enhancement factors, (6) any statement that the defendant made on his own behalf and (7) the potential for rehabilitation or treatment. T.C.A. §§ 40-35-102, -103, -210; see Ashby, 823 S.W.2d at 168; State v. Moss, 727 S.W.2d 229, 236-37 (Tenn. 1986).

The record reflects that a separate plea submission hearing was held and that a presentence report was prepared and used by the trial court in sentencing the defendant to confinement. However, the defendant has failed to include a transcript of the plea submission hearing, which presumably would contain the official statement of the facts underlying the offenses, and the presentence report in the appellate record. See Tenn. R. App. P. 24(a), (b) (content and preparation of the appellate record). These documents are essential to a de novo review, as they consist of and reflect on various factors the appellate court is required to consider. In the absence of a complete record, we cannot conduct a proper de novo review. See, e.g., State v. Hayes, 894 S.W.2d 298, 300 (Tenn. Crim. App. 1994) (holding that appellate court could not conduct de novo review of sentence where trial transcript had been omitted from appellate record).

In consideration of the foregoing and the record as a whole, the judgments of the trial court are affirmed.

JOSEPH M. TIPTON, PRESIDING JUDGE